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CLERK OF DISTRICT COURT
2012 DEC 11 PM 2:33

FILED
BY _____
DEPUTY

**MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD
COUNTY**

SANDY WELCH, Candidate

Applicant,

v.

LINDA MCCULLOCH, in her official
capacity as Secretary of State and secretary
of the Montana State Canvass Board,
**STEVE BULLOCK, MONICA J.
LINDEEN, AND DENISE JUNEAU**, in
their capacity as members of the Montana
State Canvass Board,

Respondents.

Cause No. DV-12-1369 C

**MOTION TO WITHDRAW
APPLICATION FOR MANUAL
RECOUNT**

Pursuant to Mont. R. Civ. Pro. 41(a)(2), Applicant Sandy Welch respectfully
moves this Court to allow her to withdraw her Application for Manual Recount. In
support of her motion, Applicant states as follows:

1. On December 3, 2012, Applicant filed her *Verified Application for Manual
Recount*.

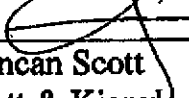
2. On December, 11, 2012, this Court issued an order on that application, finding that Applicant had successfully established probable cause to believe that the ballots in her race were not properly counted due to numerous violations of Montana law, including the use of stickers and sharpies on ballots, the use of photocopied ballots, the failure to stamp ballots, and the failure to remake ballots that jammed the M650 voting machines. Additionally, this Court found that the M650 machines jammed constantly created an environment for the excessive handling of ballots such that probable cause to believe that the ballots were not properly counted was established. In light of this, the Court ordered a statewide recount.
3. Pursuant to MCA 13-16-307(1), "The court shall in its order determine the probable expense of making the recount, and the applicant or applicants asking for the recount shall deposit with the board the amount determined, in cash."
4. This Court adopted the Secretary of State's estimate of \$115,000 as the cost to be deposited for the recount and ordered that Applicant must make the deposit by the end of business Tuesday, December 11, 2012.
5. Applicant, by counsel, argued at the December 7, 2012, hearing that the \$115,000 amount was inconsistently arrived at, with each county offering estimated costs that varied widely on a per-vote basis, running as high as 35

cents per vote. Applicant requested a flat rate of 11 cents per vote be imposed, based upon the rate Flathead County estimated. Flathead County had recently conducted a recount for the 2012 Commissioner's primary and so its estimated costs most accurately reflected the actual expenses for a recount. Flathead County is also one of the larger counties, and so for that reason reflected a more accurate cost expectation. The total cost under the flat rate would have been \$51,590.

6. Notwithstanding Applicant's arguments, this Court determined that the evidence supported an \$115,000 deposit, and so ordered in its December 11, 2012, Order.
7. Applicant has been diligently trying to raise the necessary funds to post an \$115,000 deposit. However, she has been unable to raise this amount and thus cannot post the deposit required of her by law.
8. Thus, notwithstanding the fact that the Secretary of State has admitted that failures to comply with state election procedures existed in the 2012 general election, and notwithstanding this Court's finding that probable cause exists to believe that ballots were not properly counted in the 2012 general election, Applicant withdraws her application for recount.

WHEREFORE, Applicant respectfully moves this Court to find that Applicant's application is deemed withdrawn, with each side bearing its own costs and attorney's fees.

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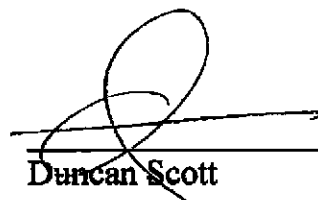
I certify that this motion was mailed, emailed and faxed to the following:

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on December 11, 2012.



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